

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KEITH LITTLE,

Plaintiff,

-v-

CITY OF NEW YORK, et al.,

Defendants.
-----X

16 Civ. 780 (PAE) (JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Pro se plaintiff Keith Little brings this action under 42 U.S.C. § 1983, alleging that the mattress he was issued while incarcerated caused him severe pain. Before the Court is the February 2, 2017 Report and Recommendation of the Hon. James C. Francis, United States Magistrate Judge, recommending that the Court dismiss this action with prejudice. Dkt. 25 (“Report”). For the following reasons, the Court adopts that recommendation.

I. Background

The Court incorporates by reference the summary of the facts provided in the Report. *See* Report at 1.

On February 2, 2016, Little filed a Complaint. Dkt. 2. On March 30, 2016, Judge Preska issued an order to amend, directing Little to file an Amended Complaint within 60 days and setting forth the legal standards that such a complaint must satisfy. Dkt. 5. On May 4, 2016, Little filed an Amended Complaint. Dkt. 6.

On June 14, 2016, the Court accepted this case as related to others before it, and on June 15, 2016, referred it to Judge Francis for general pretrial supervision and for a report and recommendation, Dkt. 9. On October 17, 2016, defendants filed a motion to dismiss the

Amended Complaint, Dkt. 21, along with a memorandum of law in support of that motion, Dkt. 22. Little never responded to the motion to dismiss. On October 18, 2016, Judge Francis issued an Order, directing Little to respond by November 15, 2016, and directing defendants to file a reply, if any, by November 30, 2016. Dkt. 24. To date, Little has filed no objection to the motion to dismiss.

On February 3, 2017, Judge Francis issued the Report, recommending that the Court dismiss the Complaint with prejudice. Objections were due by February 17, 2017. *See* Dkt. 25. To date, the Court has received no objections.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As neither party has submitted objections to the Report, review for clear error is appropriate. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report at 14, both parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

Careful review of Judge Francis's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. As Little has had ample opportunity to amend his Complaint in order to set out adequate grounds for relief, and has been given fair warning of the result of his failure to do so, *see* Report at 13–14, the Court agrees with Judge Francis that this dismissal shall be with prejudice.

CONCLUSION

For the foregoing reasons, the Court dismisses Little's Amended Complaint with prejudice. The Clerk of Court is directed to close this case.

The Court directs the Clerk to mail a copy of this decision to plaintiff at the address on file.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: February 21, 2017
New York, New York